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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,656	04/22/2004	Nick Boulachanis		6836

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Nick Boulachanis  
3623 Du Souvenir  
Laval, QC H7V 1X5  
CANADA

EXAMINER

EARLY, MICHAEL JACOBY

ART UNIT	PAPER NUMBER
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3744

DATE MAILED: 10/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/829,656	Applicant(s) BOULACHANIS, NICK	
	Examiner Michael J. Early	Art Unit 3744	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 March 2006 and 11 July 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-20 is/are pending in the application.
- 4a) Of the above claim(s) 3,6-15,19 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2,4,5 and 16-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

**Election/Restrictions**

Claims 3, 6-15, 19 and 20 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7/11/06.

Applicant's election without traverse of Group I in the reply filed on 7/11/06 is acknowledged.

**Specification**

The substitute specification filed 3/3/06 has not been entered because it does not conform to 37 CFR 1.125(b) and (c) because:

- a clean copy of the substitute specification has not been supplied (in addition to the marked-up copy).

**Claim Objections**

Claims 4, 5 and 16-18 are objected to because of the following informalities:

- Each claim is improperly labeled; the terms "... (currently amended) ..." should be removed and replaced with --...(previously presented)...--. Each claim was recited as "new" in the Amendments to the Claims (filed on 3/3/06) and thus, were never "original" claims.

Appropriate correction is required.

The claims are objected to because the lines are crowded too closely together, making reading difficult. Substitute claims with lines one and one-half or double spaced on good quality paper are required. See 37 CFR 1.52(b).

**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2, 4, 5 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gaudiosan (U.S. 6,799,965 B1) in view of Cafolla (U.S. 4,529,376) and Jensen (U.S. 6,709,266 B2).

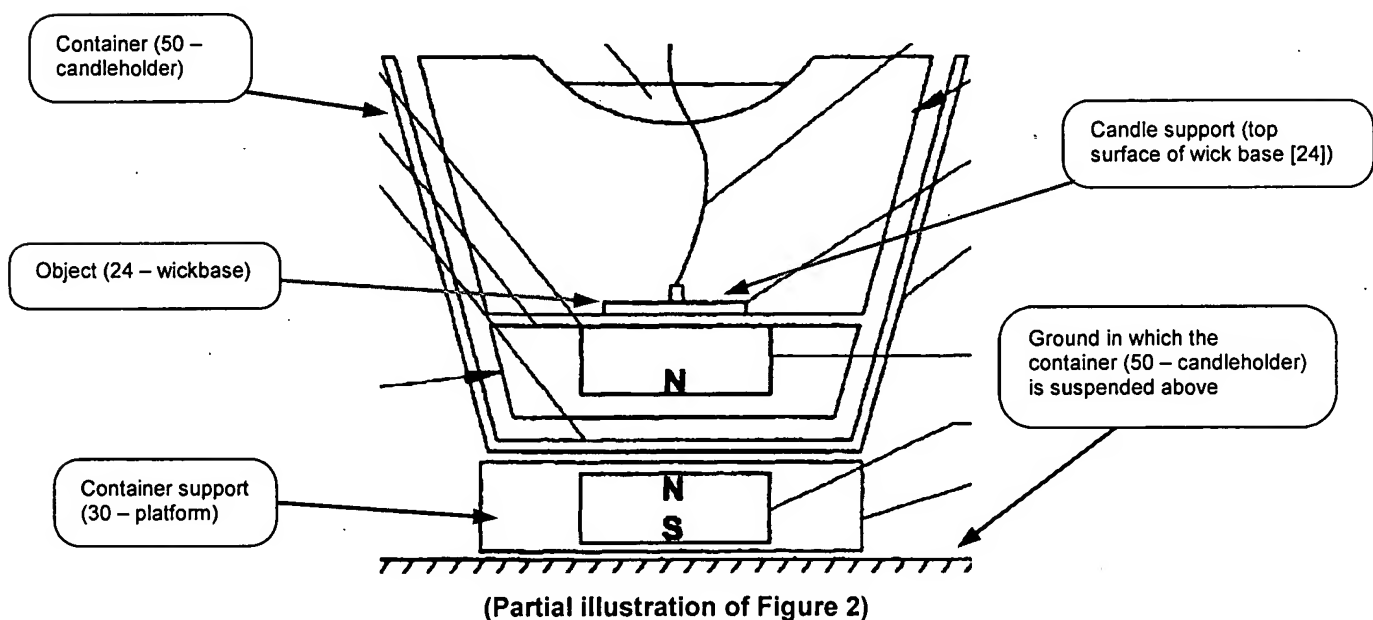
Gaudiosan discloses:

- a container (50 – candleholder) for receiving a liquid (26 – melted wax; col. 4, lines 53-66);
- an object (24 – wickbase), said object being substantially buoyant (by further of the fact that the candle floats on the wax, the candle must be buoyant) and supportable by the liquid while being at least in part submerged into the liquid (as seen in Figures 3, 4, 6);
- a first magnet (340 – second magnet) mounted to said object (as seen in Figure 9), said first magnet defining first magnet first and second magnetic poles having opposed polarities (as seen in Figure 9);
- a lit candle (20 – candle; Figure 2) selected from the group consisting of wax candles (see col. 4, lines 63-66), placed on the surface of said object (as seen in

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Figure 2), and said object includes a support (as seen in the partial illustration of Figure 2 below);

- a second magnet (35 – first magnet) movable over a predetermined path relatively to said container (see col. 3, line 66 – col. 4, line 7), said second magnet defining second magnet first and second magnetic poles having opposed polarities (as seen in Figure 9);
- a container support (30 – platform) for suspending said container (as seen in Figure 2, the platform [30] suspends [or holds] the candleholder above the ground).



Gaudioso does not expressly disclose:

- a bundle of lit candles;
- details related to the support for the candles;
- a motor;
- a magnet support and details related thereto;
- a motor casing and details related thereto.

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Cafolla teaches of a candle structure that is comprised of wicks that float upon a liquid (see col. 1, lines 5-42).

Cafolla further discloses:

- an object (12, 32 – support structure, model steamship) that is substantially buoyant (as seen in Figures 2, 3);
- a bundle of lit candles (as seen in Figure 3);
- support of said bundle of lit candles above the liquid (as seen in Figure 3);
- said object is partially submersible and floatable onto the liquid (as seen in Figure 3);
- said apparatus is usable with a combustible light source (10 – wick) and said object includes a support (22 – annular member; col. 2, lines 7-10) for supporting the combustible light source above the liquid (as seen in Figures 2, 3).

Regarding claims 1 and 5, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the existing apparatus of Gaudioso by incorporating a bundle of combustible candles that are floatable, as taught by Cafolla, for aesthetic appeal.

Regarding claim 16, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the existing apparatus of Gaudioso by incorporating the first magnet within the object, so to reduce the number of components the apparatus is comprised of, thus making it less cumbersome.

Gaudioso in view of Cafolla do not expressly disclose:

- a motor;
- a magnet support and details related thereto;
- a motor casing and details related thereto.

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Jensen teaches of a candle holder (1) that is comprised of a cavity that is used to hold a candle (6) (see col. 1, lines 11-19; Figures 1-4).

Jensen further discloses:

- a magnet (28 – bottom disc; col. 6, lines 4-8; Figure 8);
- a motor (25 – electrical motor; Figure 8) and a magnet support (26 – output shaft; Figure 8), said magnet being mounted to said magnet support (as seen in Figure 8) so that at least one of the magnet first and second magnetic poles is located eccentrically relative to said rotation axis (as seen in the illustration of Figure 8 below)
- a motor casing (24 – housing), said motor, magnet support and magnet being mounted into said motor casing (as seen in Figure 8).

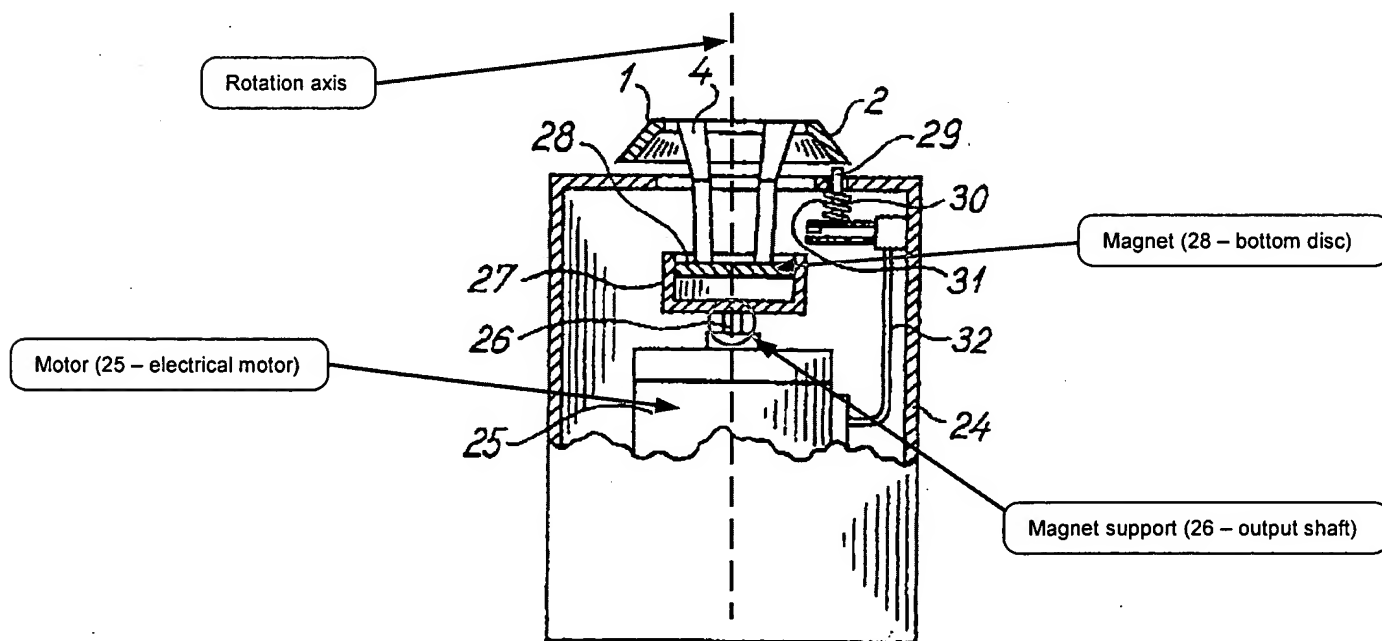


Fig. 8

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the existing apparatus of Gaudioso in view of Cafolla by incorporating a motor, magnet and magnet support that rotate in a circular pattern, as taught by Jensen, so

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reduce the likelihood that any external forces (i.e. draft from an open window, vent or fan) will cause the candle to burn in a non-uniform manner, thus providing users with a more reliable and aesthetically pleasing product.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the existing apparatus of Gaudioso in view of Cafolla incorporating the motor, magnet support and magnet within a casing, as taught by Jensen, so to protect the respective components from any external forces thus, extending the lifetime of the apparatus as well as providing users with a more reliable product.

### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Schirneker (U.S. 4,384,847) teaches of a bowl-like container that is filled with a liquid and a rotary body that rotates a plurality of candle about a rotational axis.
- Jordan (U.S. 7,090,369 B1) teaches a magnetic device for rotating a candle about a rotational axis.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.



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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Early whose telephone number is (571) 272-3681. The examiner can normally be reached on Monday - Friday, 7am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on (571) 272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MJE  
9/29/06

Michael J. Early  
Patent Examiner  
Art Unit 3744



CHERYL TYLER  
SUPERVISORY PATENT EXAMINER